United Nations A/CN.9/609/Add.2

General Assembly

Distr.: General
10 May 2006*

Original: English

United Nations Commission on International Trade Law
Thirty-ninth session
New York, 19 June-7 July 2006

Draft legislative provisions on interim measures and the form of arbitration agreement—Draft declaration regarding the interpretation of articles II (2) and VII (1) of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Compilation of comments by Governments and international organizations

Addendum

Contents

		Page
II.	Comments received from Member States and international organizations	2
	A. Member States	2
	3. Germany	2

* Submission of this note was delayed because of its late receipt.

V.06-53970 (E) 300506 300506

II. Comments received from Member States and international organizations

A. Member States

3. Germany

[Original: English]

[8 May 2006]

The German Government would like to express its thanks for the excellent Draft. Our comments are as follows:

1. Interim measures, article 17 et seq.

The German Government welcomes the Draft of article 17 et seq. now put forward. We therefore do not intend to make any suggestions regarding changes.

2. Written form requirement, article 7

The German Government favours the alternative proposal, which does not contain any provisions concerning the form of the communication. It is above all actual circumstances in practice which speak for this solution, since such agreements are often not set out in writing.

Further, the "warning function" of the written form will probably have become obsolete by now since arbitration is viewed as equal to national jurisdiction. As, in addition, the first solution also provides for the possibility of setting the agreement out in writing in retrospect, the written form can no longer be seen as having a warning function; both models thus produce the same result. The fact that the written form can be used as evidence merely has practical implications for the presentation of evidence and, as a result, also justifies omitting any form requirements. It was, not least, statements by those delegations who already have freedom of form and who unanimously reported only positive experience which were convincing.

3. Relationship to article II (2) of the New York Convention

The declaration on article II (2) of the New York Convention is to be welcomed as an interim solution. However, a revision of the New York Convention should be seriously considered for the future. This may involve a great deal of work, but the result should be favoured on account of its higher degree of legal certainty. If the New York Convention itself is not amended, this will merely lead to the mitigation of resulting problems caused by legal instruments such as the proposed declaration. The problem itself will remain, nonetheless. Against this background, an attempt should be made to tackle this problem, too.